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FEDERAL CONTROL OF WATER POWER IN SWITZERLAND

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On October 24 and 25, 1908, by a vote of 292,997 to 52,180, the people of Switzerland adopted an amendment to the Federal Constitution which gives to the Swiss Federal Government the supervision of the utilization of water power. The text of this amendment is as follows:

"ARTICLE 24b. The Union has supervision over the development of water powers.

"The Federal Congress shall regulate the disposal and terms of water-right concessions, as well as the transmission and delivery of electrical energy, so far as the protection of public interests and the proper development of these resources require such regulation.

"Wherever Federal law does not regulate the terms of the water-right concessions, the disposal of these concessions, as well as the determination and collection of taxes and fees for their use is under the jurisdiction of the Cantons. But this regulation by the Cantons shall not be so onerous as to discourage the development of water powers.

"In cases where water power is developed on streams which touch upon the territory of several Cantons, or upon the National boundary, the disposal of the concessions and the determination of the taxes and fees to be collected by the Cantons will rest with the Union, after hearings have been given to the interested Cantons.

"The delivery abroad of energy developed from water power requires the consent of the Federal Council.

"The provisions of the Federal law apply also to the already existing water-right concessions, unless exception is expressly made."

It is now fifteen years since the question of giving to the Union jurisdiction over the utilization of water power was first agitated in the Swiss Congress. The history of the effort to secure the necessary legislation, down to the adoption of the new amendment, is of great interest in the United States, where the equitable use of water power is in the forefront among the problems dealing with the conservation of natural resources.

When the Federal regulation of water power was first agitated in Switzerland, the utilization of water power was in the hands of the Cantons, except for the provisions of Articles 23 and 24 of the Federal Constitution, which had some distant bearing on the subject. Article 23 gave the Union the right of expropriation, for the purpose of establishing or maintaining public works in the interest of the Swiss Republic. Article 24 gave the Union the supreme control over the water and forest police in the mountainous district of the country, and was meant to safeguard the mountain streams and to aid in forest planting about their sources.

In 1894 the "Frei Land Company," an industrial organization, petitioned the Federal authorities that the Constitution be amended so as to make all water powers not yet utilized the property of the Union, and to make their exploitation subject to Federal control. The Executive Council called in experts to consider this petition, and consulted the cantonal governments. On June 4, 1894, it reported to Congress adversely upon the petition, opposing it on the ground that it tended to create a state monopoly of water powers. The Council also made certain recommendations with regard to future legislation by the Cantons, and reserved the right to propose some new bill dealing with inter-cantonal relations in the establishment of hydro-electric projects.

So the matter rested until 1898, when a resolution was offered in Congress which proposed not only that the inter-cantonal relations in establishment of hydro-electrical projects be regulated, but that deficient cantonal laws be supplemented, and the Union be empowered to supervise the erection of hydraulic works.

In 1901 Congress requested the Executive Council to examine into the advisability of electrifying the Swiss railways.

In 1902 a resolution was offered, which pointed out the danger of permitting private interests to acquire, more or less without restriction, such water powers as might be needed in electrifying the railways. This resolution enumerated a number of points requiring legislative regulation, and laid special stress upon the duty of safeguarding the public interests in the utilization of water power. It was adopted in 1904.

In 1906 resort was had to the initiative. An initiative petition bearing 95,290 signatures urged an amendment of the Constitution which would give the Union power to regulate the utilization of

water powers and the transmission and delivery of the energy produced therefrom, leaving to the Cantons and to those legally authorized by them the right to levy the taxes and fees to be paid for the use of the power. The amendment also gave to the Executive Council the power to sell or lease water powers to foreign corporations. The text of the initiative amendment was as follows:

"ARTICLE 23b. The Federal Congress shall have power to regulate the exploitation of water powers and the transmission and delivery of the energy developed therefrom.

"But the several Cantons, or those duly authorized by them, shall be entitled to the taxes and fees paid for the use of water power.

"From the date of the adoption of this article all new concessions of water rights shall be subject to future Federal legislation, and the delivery of energy developed from water power to foreign countries shall be subject to the approval of the Executive Council."

According to the usual procedure, this petition was referred by Congress to the Executive Council for report.

On March 30, 1907, the Executive Council made its report to Congress. This report reviewed the earlier petitions and resolutions dealing with the Federal regulation of water power, and concluded that the amendment proposed in the petition was open to improvement. The Council was of the opinion that the Constitution should be so amended as to provide for legislation upon the four following points:

1. The systematic utilization of inter-cantonal and boundary streams.
2. The supplementing of deficient cantonal laws.
3. The rights of the Union as proprietor of the Federal railroads.
4. Measures in the interest of the general welfare.

In order to frame an amendment which would give the Union the necessary powers without infringing upon the rights of the Cantons, the Department of the Interior called together a commission of jurists and experts. This commission met in Bern on January 9, 10, and 11, 1907, and adopted a new draft of an amendment as follows:

"ARTICLE 24b. The development of water power is under the supervision of the Union.

"The Federal Congress shall regulate the disposal and terms of water-rights concessions, as well as the transmission and delivery of electrical energy, so far as the protection of public interests and the proper development of these resources require such regulation.

"Wherever the Federal law does not regulate the terms of water-right concessions, the disposal of such concessions, as well as the determination and collection of the taxes and fees for their use, is under the jurisdiction of the Cantons. But this regulation by the Cantons shall not be so onerous as to discourage the development of water powers.

"When the streams from which the power is developed lie in several Cantons, or along the national boundary, the disposal of the concessions and the determination of the taxes and fees shall rest with the Union, after hearings have been given to the interested Cantons.

"From the date of the adoption of this article all new concessions of water rights shall be subject to future Federal legislation, and the delivery of energy developed from water powers to foreign countries shall be subject to the approval of the Executive Council."

The Executive Council, in its report, then carefully compared the commission's amendment with the amendment proposed in the initiative petition. It pointed out that the initiative petition deprived the Cantons of all jurisdiction over water powers and left to them only the right to collect the charges made for the use of the water powers. This it criticised adversely, as tending toward Federal ownership or monopoly of water powers. It approved the change made in this respect by the expert commission, which proposed that in the jurisdiction over water powers there should be the same division of authority between the Union and the Cantons as already existed in the case of hydraulic works, forests, and game protection. It held, with the expert commission, that when water powers lay wholly within a single Canton it would be sufficient to give the Union supervisory powers which would enable it to protect the public interest and guarantee the proper development of water power resources, but that in the case of inter-cantonal and boundary streams the Union should be empowered to dispose and fix the terms of water right concessions, after hearings given to the interested Cantons. In the absence of Federal legislation, it held, also in concurrence with the commission, that the Cantons should retain jurisdiction, since the right of supervision would enable the Federal authorities to intervene when necessary, either on their own initiative or at the request of some interested party.

The Council further criticised the initiative petition for its

failure to provide a basis for future legislation. It pointed out, also, the need of a verbal change in section 4 of the commission's amendment, so as to enlarge its provisions to cover streams or water courses which flow between Cantons as well as those which are strictly inter-cantonal. Finally, it suggested the change in the last section which provides that future Federal legislation shall apply to existing water right concessions unless exception is expressly made.

The Council closed its report by recommending a substitute amendment based upon both of the proposed amendments before it, and embodying the fruits of the above criticism. The petitioners had authorized the withdrawal of their amendment in favor of such a substitute, and in due course the amendment recommended by the Council was put to vote, with the result already given.

According to the practice, the amendment was published and commented on by the Swiss press. The following clipping from one of the local papers is of interest as showing how great was the importance attached to the amendment by the Liberal Democratic Party:

"THE WATER RIGHTS ARTICLE.

"The central committee of the Liberal Democratic party of the Canton of Bern issues the following appeal:

"Fellow-citizens! On the national election day you are to vote upon an amendment to the Federal Constitution, which would grant to the Union the right to control by legislation the use of water power and the transmission of the energy developed therefrom. In order that our valuable water powers may be developed systematically for the benefit of the country, uniform principles of proper use are to be laid down. The Cantons will retain the rights which they can properly claim and which they have effectively exercised hitherto. To the Union will be given the duties which the Cantons cannot discharge, but which need to be regulated by the Union if development is not to be permanently crippled. Thus far only a small part of our water power has been utilized; we have been paying every year a tribute amounting to millions of Marks in the purchase of coal, etc., abroad, though a great part of this sum could be kept at home if our water powers were better utilized. Yet petty considerations and unworthy special interests are preparing in different places to defeat this measure. For this reason those who truly appreciate its great importance must take their stand with determination and work hard for its adoption. The issue is the protection of great national resources, the advancement of the economic interests of all Switzerland, and therefore of the general welfare of the fatherland.'"